

in so many other contexts. If anything, Congress's long history of using an inmate's sentence to calculate good conduct time supports a conclusion that Congress would have been more explicit if it had intended to adopt a different policy. Firststar Bank, 253 F.3d at 988 ("The courts presume that Congress will use clear language if it intends to alter an established understanding about what a law means; if Congress fails to do so, courts presume that the new statute has the same effect as the older version."). (Petitioner also cites statements by Senator Joseph Biden, who co-authored the Comprehensive Crime Control Act of 1984, that § 3624(b) was intended to give inmates good time credit of up to 15% of their sentences. 141 Cong. Rec. S2348-01 (Feb. 9, 1995); 140 Cong. Rec. S12314-01, S12350 (Aug. 23, 1994). However, because both of these statements were made well after § 3624 was enacted, their probative value is limited. Sullivan v. Finkelstein, 496 U.S. 617, 628 n.8 (1990) (noting "difficulties inherent in relying on subsequent legislative history"); St. Francis Hospital Center v. Heckler, 714 F.2d 872, 880 (7th Cir. 1983) ("[P]ost enactment history is not the surest guide of the legislative intent in initially passing the Act.").)

Neither the Supreme Court nor the Court of Appeals for the Seventh Circuit has held explicitly that § 3624(b) requires the bureau to calculate good conduct time on the basis of the sentence imposed. However, as petitioner points out, the court of appeals has assumed that an inmate may be able to deduct up to 15% of his or her *sentence* by earning good conduct time (54 days is approximately 15% of one year). E.g., United States v. Martin, 100

F.3d 46, 47 (7th Cir. 1996) (assuming that inmate could earn 4.5 years of good conduct time on 30-year sentence, or 15%); see also United States v. Prevatte, 66 F.3d 840, 846 (7th Cir. 1995) (Posner, J., concurring) (assuming that inmate can reduce *sentence* through good conduct time by up to 14.7%).

One court has determined that the meaning of “term of imprisonment” in § 3624 is ambiguous. Pacheco-Camacho v. Hood, 272 F.3d 1266 (9th Cir. 2001). However, in coming to this conclusion, the court did not consider how the phrase was used in the first sentence of § 3624(a) and the first sentence of § 3624(b)(1), as well as in the rest of the criminal code. Moreover, the court did not take into account the history of the statute showing that Congress intended good conduct time to be deducted from an inmate’s sentence. In finding the statute ambiguous, the court relied solely on the last sentence of § 3624(b)(1), which states that “credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.” The court concluded that a “sentence imposed” interpretation of “term of imprisonment” would be “inconsistent” with a requirement to prorate good time credits during the last year of the term. Pacheco-Camacho, 272 F.3d at 1268-69.

I respectfully disagree with the conclusion that § 3624(b)(1) is ambiguous because it requires the last year of the term to be prorated. This requirement would support the bureau’s interpretation of the statute only if all prison sentences were imposed in whole

years. Because defendants in federal court are sentenced to a term of months rather than years, many sentences will end in a number of months after the last full year. Thus, there is nothing inconsistent between prorating good time for the last year of the term and interpreting “term of imprisonment” to mean the sentence. Regardless of the interpretation of “term of imprisonment,” an inmate’s good time will have to be prorated when his or her sentence consists of a number of years and some odd months.

In Pacheco-Camacho, the court stated that a “sentence imposed” construction would result in a “bonus” to the inmate because he or she will receive credit in advance of earning it. Respondent makes a similar argument. Resp.’s Br., dkt. #15, at 8 (“Petitioner’s] proposed calculation allows prisoners to accrue good time credits for time they never serve.”) However, this argument has force only if one assumes that the bureau’s interpretation is the correct one. If one assumes that “a year” of the “term of imprisonment” is a year of the sentence imposed, then an inmate has completed a year of the term whenever the inmate’s time actually served plus good conduct time equals 365 days (e.g., 311 days served + 54 days of good conduct time = 1 year of the term of imprisonment). Thus, the inmate still “earns” all of his good conduct time, but he does so at a faster rate than under the bureau’s interpretation of the statute.

Finally, the Court of Appeals for the Ninth Circuit cited United States v. Johnson, 529 U.S. 53 (2000), to support its conclusion that § 3624(a) does not inform the proper

interpretation of § 3624(b). The court's reliance on Johnson is puzzling. In that case, the Supreme Court recognized only that under § 3624(e), a "term of supervised release" cannot begin until the inmate has been released from confinement. Johnson, 529 U.S. at 58-59. It did not consider the correct interpretation of the phrase "term of imprisonment" or suggest that words in § 3624 have different meanings in different parts of the statute. Thus, Johnson is not instructive in this case.

Respondent makes one other argument not raised by the court in Pacheco-Camacho: adopting petitioner's interpretation of § 3624(b) would be contrary to Congress's intent to give the bureau discretion in awarding good conduct time. He relies on Lopez v. Davis, 531 U.S. 230 (2001), in which the Supreme Court concluded that the bureau had discretion under 18 U.S.C. § 3621(e)(2)(B) to deny a sentence reduction because the statute provides that the bureau "may" reduce sentences under particular circumstances. Respondent notes that § 3624(b) has a similar provision that an inmate "may" receive up to 54 days of credit for each year of the term of imprisonment.

Respondent confuses two very different issues. There is no question that the bureau has discretion to deny good conduct time when it concludes that the inmate's behavior does not warrant it. Petitioner acknowledges that discretion. He is not challenging the bureau's decision to disallow 10 days of good conduct time after he was found guilty of a rule violation. However, discretion in *granting* good conduct time does not translate into

discretion for choosing the method for *calculating* good conduct time. The statute does not say that the bureau “may” calculate good conduct time in any way it wants. Rather, the statute uses the phrase “term of imprisonment” as the basis on which good conduct time must be calculated.

As noted above, an agency does not have discretion to interpret a statute that is unambiguous. Because I have concluded that Congress had the unambiguous intent to define the phrase “term of imprisonment” to mean “sentence imposed,” I conclude that the bureau did not have authority to promulgate a regulation that uses “time served” as the basis for the calculation. The petition must be granted.

ORDER

IT IS ORDERED that petitioner Yancey White’s petition for a writ of habeas corpus under 28 U.S.C. § 2241 is GRANTED. Respondent Joseph Scibana is directed to recalculate petitioner’s good conduct time on the basis of each year of his *sentence* rather than on time

actually served.

Entered this 23rd day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge

(White v. Scibana, Docket No.: 03-CV-581-C - 4/23/04)

SENTENCE IMPOSED BY COURT - FEBRUARY 10, 2004	63 MONTHS
SENTENCE IMPOSED MEASURED IN YEARS	5 1/4 YEARS
GOOD CONDUCT CREDIT FOR EACH YEAR OF SENTENCE IMPOSED	54 DAYS
GOOD CONDUCT CREDIT FOR PETITIONER'S SENTENCE IMPOSED	283.5 DAYS
EXPIRATION OF <u>FULL TERM</u> OF SENTENCE	JULY 10, 2007
LESS: GOOD CONDUCT CREDIT AS COMPUTED ABOVE	283.5 DAYS
EXPIRATION OF SENTENCE ADJUSTED FOR GOOD CONDUCT CREDIT	SEPTEMBER 29, 2006

7055 INMATE REQUEST TO STAFF CDRFM

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member)	DATE:
STEPHEN GAGNON/ISM	JUNE 14, 2004
FROM:	REGISTER NO.:
CHARLES E. LOUDON	04518-082
WORK ASSIGNMENT:	UNIT:
CCS-PM	G-A

SUBJECT: (Briefly state your question or concern the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to respond to your request.)

On April 23, 2004, the Honorable Barbara B. Crabb, Chief U.S. District Judge for the Western District of Wisconsin, ruled that federal prisoners are entitled to good conduct credit totalling 54 days per year, for every year of the "sentence imposed." See, White v. Scibana, Docket No.: 03-CV-581-C (4/23/04). This holding calls into question the operation and correctness of both 28 C.F.R. §523.20 and 5880.28. Consequently, I am hereby respectfully requesting that my good conduct time allowance be re-computed, consistent with the holding in Scibana, supra.

Please take notice that this request shall constitute the exhaustion of my administrative remedies, and that further exhaustion would be futile.

Thank you for your time and attention in this matter.

(Do not write below this line.)

Charles E. Loudon

DISPOSITION:

Signature Staff Member:	Date:
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SECOND REQUEST - JUNE 21, 2004

7055 INMATE REQUEST TO STAFF CDRFM

DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member)	DATE:
STEPHEN GAGNON/ISM	JUNE 14, 2004
FROM:	REGISTER NO.:
CHARLES E. LOUDON	04518-082
WORK ASSIGNMENT:	UNIT:
CCS-PM	G-A

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to respond to your request.)

On April 23, 2004, the Honorable Barbara B. Crabb, Chief U.S. District Judge for the Western District of Wisconsin, ruled that federal prisoners are entitled to good conduct credit totalling 54 days per year, for every year of the "sentence imposed." See, White v. Scibana, Docket No.: 03-CV-581-C (4/23/04). This holding calls into question the operation and correctness of both 28 C.F.R. §523.20 and 5880.28. Consequently, I am hereby respectfully requesting that my good conduct time allowance be re-computed, consistent with the holding in Scibana, supra.

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Charles E. Loudon

DISPOSITION:

Signature Staff Member:	Date:
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Per Program Statement 5880.28, Good Conduct Time (GCT) is controlled by 18 U.S.C. 3624(b) - it states:

A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment.....

For computation purposes, it is necessary to remember the following about subsection 3624(b):

54 days of GCT may be earned for each full year served on a sentence in excess of one year, with the GCT being prorated for the last partial year.

Your good conduct time is calculated for each year actually served, not the total term in effect. You must be in custody to receive good conduct time.

If the above answer is not satisfactory to your request, you may begin the Administrative Remedy process.

A current good time data sheet is attached - you are earning 54 days per year.

[illegible][illegible]

-----GOOD CONDUCT TIME AGENCIES-----

13	bu	14	bu	15	bu	16	bu	17	bu	18	bu	19	bu	20	bu	21	bu	22	bu	23	bu	24	bu	25	bu	26	bu	27	bu	28	bu	29	bu	30	bu	31	bu	32	bu	33	bu	34	bu	35	bu	36	bu	37	bu	38	bu	39	bu	40	bu	41	bu	42	bu	43	bu	44	bu	45	bu	46	bu	47	bu	48	bu	49	bu	50	bu	51	bu	52	bu	53	bu	54	bu	55	bu	56	bu	57	bu	58	bu	59	bu	60	bu	61	bu	62	bu	63	bu	64	bu	65	bu	66	bu	67	bu	68	bu	69	bu	70	bu	71	bu	72	bu	73	bu	74	bu	75	bu	76	bu	77	bu	78	bu	79	bu	80	bu	81	bu	82	bu	83	bu	84	bu	85	bu	86	bu	87	bu	88	bu	89	bu	90	bu	91	bu	92	bu	93	bu	94	bu	95	bu	96	bu	97	bu	98	bu	99	bu	100	bu	101	bu	102	bu	103	bu	104	bu	105	bu	106	bu	107	bu	108	bu	109	bu	110	bu	111	bu	112	bu	113	bu	114	bu	115	bu	116	bu	117	bu	118	bu	119	bu	120	bu	121	bu	122	bu	123	bu	124	bu	125	bu	126	bu	127	bu	128	bu	129	bu	130	bu	131	bu	132	bu	133	bu	134	bu	135	bu	136	bu	137	bu	138	bu	139	bu	140	bu	141	bu	142	bu	143	bu	144	bu	145	bu	146	bu	147	bu	148	bu	149	bu	150	bu	151	bu	152	bu	153	bu	154	bu	155	bu	156	bu	157	bu	158	bu	159	bu	160	bu	161	bu	162	bu	163	bu	164	bu	165	bu	166	bu	167	bu	168	bu	169	bu	170	bu	171	bu	172	bu	173	bu	174	bu	175	bu	176	bu	177	bu	178	bu	179	bu	180	bu	181	bu	182	bu	183	bu	184	bu	185	bu	186	bu	187	bu	188	bu	189	bu	190	bu	191	bu	192	bu	193	bu	194	bu	195	bu	196	bu	197	bu	198	bu	199	bu	200	bu	201	bu	202	bu	203	bu	204	bu	205	bu	206	bu	207	bu	208	bu	209	bu	210	bu	211	bu	212	bu	213	bu	214	bu	215	bu	216	bu	217	bu	218	bu	219	bu	220	bu	221	bu	222	bu	223	bu	224	bu	225	bu	226	bu	227	bu	228	bu	229	bu	230	bu	231	bu	232	bu	233	bu	234	bu	235	bu	236	bu	237	bu	238	bu	239	bu	240	bu	241	bu	242	bu	243	bu	244	bu	245	bu	246	bu	247	bu	248	bu	249	bu	250	bu	251	bu	252	bu	253	bu	254	bu	255	bu	256	bu	257	bu	258	bu	259	bu	260	bu	261	bu	262	bu	263	bu	264	bu	265	bu	266	bu	267	bu	268	bu	269	bu	270	bu	271	bu	272	bu	273	bu	274	bu	275	bu	276	bu	277	bu	278	bu	279	bu	280	bu	281	bu	282	bu	283	bu	284	bu	285	bu	286	bu	287	bu	288	bu	289	bu	290	bu	291	bu	292	bu	293	bu	294	bu	295	bu	296	bu	297	bu	298	bu	299	bu	300	bu	301	bu	302	bu	303	bu	304	bu	305	bu	306	bu	307	bu	308	bu	309	bu	310	bu	
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TOTAL EARNED AMOUNT.....	11.00
TOTAL EARNED AND PROJECTED AMOUNT.....	22.44

TRANSACTION SUCCESSFULLY COMPLETED - CONTINUE PROCESSING IF DESIRED